

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**JERRY CHUN SHING LEE**

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**Criminal No. 1:18-cr-89**

**ORDER**

This matter is before the Court on the government's request to add classification markings to trial exhibits that it represents contain classified information. For the reasons that follow, the request must be denied.

The government seeks to add classification markings to exhibits that did not contain such markings at the time they played a role in this case. The addition of classification markings to exhibits that did not previously contain such markings would essentially provide the government an opportunity to testify in the jury room. This is inappropriate. The jury must see the exhibits as they appeared when they played a role in this case.<sup>1</sup>

Accordingly, and for good cause,

It is hereby **ORDERED** that the government's request to add classification markings to trial exhibits that did not contain such markings at the time they played a role in this case is **DENIED**.<sup>2</sup>

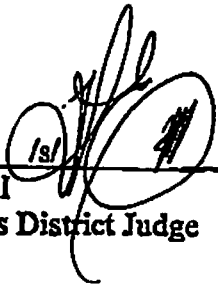
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<sup>1</sup> For example, the government seeks to add classification markings to two notebooks that defendant possessed. The notebooks are alleged to contain the principal National Defense Information ("NDI") in this case. When the government discovered the notebooks in defendant's possession, the notebooks did not contain classification markings. Accordingly, the jury must see the notebooks without classification markings, as defendant possessed them. It is neither fair nor necessary to allow the government to add classification markings to the notebooks. Classification markings are too suggestive of an ultimate issue in this case—namely, whether the notebooks contain NDI.

<sup>2</sup> Exhibits that contained classification markings at the time they played a role in this case may be introduced with those preexisting classification markings.

The Clerk of Court is directed to send a copy of this Order to all counsel of record.

Alexandria, Virginia  
April 15, 2019



T. S. Ellis, III  
United States District Judge